

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4737 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

SALAHUDDIN H BEG

Versus

AMBALAL GUMANBHAI

Appearance:

Shri H.B. SHAH, Advocate, for the Petitioners.

Respondents Nos. 1 and 2 served.

Shri M.R.ANAND, Government Pleader (Senior Counsel),
instructed by Shri T.H.Sompura, Assistant
Government Pleader, for Respondent No.3.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/04/96

ORAL JUDGEMENT

The order passed by the Collector of Bharuch on 7th/12th July 1989 as affirmed in revision by the order passed by and on behalf of the State of Gujarat (respondent No.3 herein) on 5th April/31st May 1990 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, the Collector of Bharuch set aside the order passed by the Mamlatdar of Ankleshwar on 4th September 1990 certifying entry No.1912 with respect to one parcel of land bearing Block No.131/2 situated in village Bhadkodra taluka Ankleshwar district Bharuch (the disputed land for convenience) as also the order passed by the Deputy Collector of Bharuch on 30th June 1986.

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to respondent No.1. He appears to have sold it to respondent No.2 some time prior to 15th May 1980. It was mutated in the name of respondent No.2 by entry No.1912 effected on 15th May 1980. It was certified by the Mamlatdar of Ankleshwar on 4th September 1980. It appears to have come to the notice of the Assistant Collector of Bharuch. He appears to have found it not according to law. Thereupon, its suo motu revision under Rule 108 (6) of the Gujarat Land Revenue Rules 1972 (the Rules for brief) framed under the Bombay Land Revenue Code, 1879 (the Code for brief) was contemplated. Thereupon, a show cause notice came to be issued on 27th June 1983 calling upon respondent No.2 to show cause why the aforesaid mutation entry should not be cancelled. A copy of the aforesaid show cause notice is at Annexure-C to this petition. It appears that by the order passed by the Assistant Collector on 19th September 1983, the aforesaid mutation entry came to be cancelled. That aggrieved respondent No.2 herein. He carried the matter in revision before respondent No.3 presumably under section 211 of the Code. By its order passed on 22nd November 1985 in the aforesaid revisional application, the order passed by the Assistant Collector on 19th September 1983 was set aside and the matter was remanded to the Collector of Bharuch for his fresh decision according to law. It appears that the matter was assigned to the Deputy Collector of Bharuch for the purpose. By his order passed on 30th June 1996, the Deputy Collector of Bharuch found the sale transaction in favour of respondent No.2 herein to be quite legal and valid. He thereupon dropped the proceeding arising from the show cause notice at Annexure-C to this petition. A copy of the order passed by the Deputy Collector on 30th

June 1986 is at Annexure-D to this petition. It appears that, in the meantime, respondent No.2 obtained from Taluka Panchayat by its order passed on 6th October 1983 what is popularly known as the N.A.Permission under the Code. Its copy is at Annexure-A to this petition. Thereafter, the disputed land was sold by respondent No.2 to the petitioners by a registered sale deed executed on 16th January 1989. It appears that the Collector of Bharuch thereafter issued one show cause notice on 30th March 1989 calling upon respondent No.2 herein to show cause why the aforesaid mutation entry certified by the Mamlatdar of Ankleshwar on 4th November 1980 and the order passed by the Deputy Collector on 30th June 1986 at Annexure-D to this petition should not be revised. It appears that respondent No.2 herein had lost all interests in the matter as he had sold the disputed land to the present petitioners and he therefore did not remain present in response to the show cause notice issued by the Collector of Bharuch. Thereupon, by the order passed on 7th/12th July 1989 under section 108 (6) of the Rules, the Collector of Bharuch set aside both the aforesaid mutation entry and the Deputy Collector's order at Annexure-D to this petition. A copy of the aforesaid order passed by the Collector of Bharuch on 7th/12th July 1989 is at Annexure-F to this petition. That aggrieved the present petitioners. They therefore carried the matter in revision before respondent No.3. By the order passed by and on behalf of respondent No.3 on 5th April/31st May 1990, the aforesaid revisional application came to be rejected. Its copy is at Annexure-G to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-F to this petition as affirmed in revision by the order at Annexure-G to this petition.

3. Learned Counsel Shri Anand for respondent No.3 has raised a preliminary objection as to maintainability of this petition under Article 227 of the Constitution of India. At this stage, learned Advocate Shri Shah for the petitioners has orally applied for its conversion also under Article 226 of the Constitution of India. Such oral request made by learned Advocate Shri Shah for the petitioners is granted on payment of the deficit court fees, if any, within 15 days from today.

4. It is obvious that the aforesaid mutation entry as certified by the Mamlatdar of Ankleshwar was found to be legal and valid in view of the order passed by the Deputy Collector on 30th June 1986 at Annexure-D to this

petition. If that order was not found to be legal and valid, it could not have been revised in exercise of the powers under rule 108 (6) of the Rules beyond any reasonable time.

5. In this connection, a reference deserves to be made to the binding ruling of the Supreme Court in the case of STATE OF GUJARAT v. PATEL RAGHAV NATHA reported in (1969) 10 Gujarat Law Reporter at page 992. Therein, it has clearly been held that revisional powers under section 211 of the Code for correction of mutation entry cannot be exercised beyond any reasonable time and such reasonable time was considered to be three months from the date of certification of the mutation entry. The aforesaid ruling of the Supreme Court is binding to this court.

6. By analogy, the aforesaid binding ruling of the Supreme Court is on all fours applicable in the present case. The powers under Rule 108 (6) of the Rules are similar to those under section 211 of the Code. If powers under section 211 of the Code could not be exercised beyond the reasonable period of three months from the date of certification of the mutation entry, it is obvious that the revisional powers under section 108 (6) of the Rules could not be exercised beyond that very same period of three months from the date of certification of the entry in question. As pointed out hereinabove, the order certifying the entry passed by the Mamlatdar on 4th September 1980 was found to be legal and valid by the order passed by the Deputy Collector of Bharuch on 30th June 1986 at Annexure-D to this petition. The show cause notice for its revision was issued nearly three years thereafter on 30th March 1989. This was certainly not permissible in view of the aforesaid binding ruling of the Supreme Court. The show cause notice itself was incompetent. In that view of the matter, the order passed pursuant thereto on 5th/12th July 1989 at Annexure-F to this petition was also incompetent, and as such null and void. The revisional order at Annexure-G to this petition affirming the null and void order at Annexure-F to this petition is also of no consequence.

7. In view of my aforesaid discussion I am of the opinion that the order at Annexure-F to this petition as affirmed in revision by the order at Annexure-G to this petition deserves to be quashed and set aside.

8. In the result, this petition is accepted on condition of payment of the deficit court fees, if any,

within 15 days from today. The order passed by the Collector of Bharuch on 7th/12th July 1989 at Annexure-F to this petition as affirmed in revision by the order passed by and on behalf of the State of Gujarat on 5th April/31st May 1990 at Annexure-G to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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